



Chapter 40B Update

March 6, 2003

Jane Wallis Gumble, Director



Recap – the 2001 Changes

Regulatory Changes in March and August 2001

- Notice Requirements are Expanded
- Affirmative Defenses are Established
- Subsidized Housing Inventory is Updated



Recap – the 2001 Changes

- Site approval letters
- Counting units
- Recent progress
- Project size
- “Cooling off period”



March 2001 - Notice Changes

- Requires applicants to a subsidizing agency to provide notice to DHCD
- Requires notice to DHCD of receipt of a Site Approval letter
- Requires a 30 day period before a Site Approval letter can be issued



August 2001 - Notice Changes

- The regulation governing site approval is further expanded to require subsidizing agents to notify DHCD and the community's chief elected official when a developer applies for preliminary approval
- Notice to the community triggers a 30 day comment period
- The subsidizing agent must consider the comments received before issuing a written determination of project eligibility



Why are the Notice Changes Important?

- Allows stakeholders to provide feedback regarding the proposal early in the process
- Allows the community to obtain technical assistance at the earliest opportunity, so that it may make informed decisions
- Allows the community to designate and individual to informally discuss the project outside the ZBA hearing process.



Recap – the 2001 Changes

Counting Units:

- Units count if they have received building permits, or occupancy permits
- Permits issued after Sept 1, 2001:
Units will count when a comprehensive permit becomes final, so long as a building permit is issued within a year.



Recap – the 2001 Changes

■ Recent Progress

—ZBA may deny an application if the community increases its affordable housing stock by 2% or more in the year before receiving a Comprehensive Permit Application.



Recap – the 2001 Changes

■ Large Scale Projects

- ZBA may deny an application in towns with..

7,500 or more units :

—If application is for more than 300 units or 2% whichever is larger.

5,001 - 7,499 units :

—If application is for more than 250 units

2,500 – 5,000 units :

—If application is for more than 200 units

under 2,500 :

—If application is for more than 150 units



Recap – the 2001 Changes

Cooling off period:

- ZBA may deny a Comprehensive Permit application if within the previous 12 months...
 - An application was received for the same piece of land and included no affordable housing.
 - Any such application was pending
 - Any such application was withdrawn or otherwise disposed.



What Precipitated the 2002 Regulation Changes?

- **The Omnibus Housing Bill, adopted by the Legislature on July 31, 2002, and the Governor's subsequent veto.**
- **Problems associated with proposed Chapter 40B developments funded by the Federal Home Loan Bank's New England Fund**



What regulatory changes were promulgated as a result of the Omnibus Housing Bill?

- New rules for counting units on the Subsidized Housing Inventory
- Planning is emphasized, and communities that engage in planning are afforded significant relief from comprehensive permits.
- Communities are encouraged to engage in locally initiated affordable housing, and will have units count toward their housing goals under newly amended Local Initiative Program Regulations.



Local Initiative Program Regulation

- **3 Options for the Local Initiative Program (LIP)**
 - Local Initiative Units
 - Local Housing Program
 - Local Initiative General Program



New Counting Rules

- **Group Home Units** (as reported by the Department of Mental Health and the Department of Mental Retardation) will count on the Subsidized Housing Inventory.
- **Accessory Apartments** serving income-eligible households will count on the Subsidized Housing Inventory.
- **Community Housing** developed using Community Preservation Act funds which serve households earning up to 80% of area median income will count on the Subsidized Housing Inventory.



The New “Planned Production” regulation

- If a community develops a plan under which it will permit and build affordable housing units in an amount equal to or greater than $\frac{3}{4}$ of 1 percent of its year-round housing units every calendar year, it can deny comprehensive permits for one year.
- If a community develops a plan under which it will permit and build affordable housing units in an amount equal to or greater than 1.5 percent of its year-round housing units every calendar year, it can deny comprehensive permits for two years.



The New “Planned Production” Regulation

- What’s the bottom line?
 - If a community permits and builds affordable housing in accordance with its certified plan, it may never be required to grant another comprehensive permit.



What problems with NEF-funded developments prompted regulation changes?

- Communities advised DHCD and other government officials that:
 - Developments were frequently not appropriate to the proposed site
 - Developments were too large scale
 - Lack of program guidelines from the NEF resulted in many problems:
 - Income eligibility standards unclear
 - Pricing of ownership and rental units did not fit 40B income-eligibility standards



The Regulation

The result:

Project Administrator(s) authorized by DHCD will issue site approval and final approval for NEF developments, and will administer the projects in accordance with the Department's Guidelines.



Why is the “NEF” regulation a good solution?

- It preserves a significant funding source for affordable housing development
 - Currently, there is \$2 billion in NEF-funded housing development in the pipeline
- It holds NEF-funded developments to the same high standards as other affordable housing developments in the Commonwealth.



Contact Information

DHCD

**One Congress Street, 10th Floor
Boston, Massachusetts 02114**

Phone: 617.727.7765

Facsimile: 617.727.5060

www.mass.gov/dhcd